



PRE-APPEAL BRIEF REQUEST FOR REVIEW	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed Name _____	Docket Number (Optional) 058268.00324
	Application Number: 10/694,732
	Filed: October 29, 2003
	First Named Inventor: Cheng-Liang HOU
	Art Unit: 2616 Examiner: R.K. JAIN

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed
- ☒ Attorney or agent of record.
Registration No. 54,749

- ☐ Attorney or agent acting under 37 CFR 1.34.
Reg. No. is acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

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February 26, 2008
Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- ☐ *Total of _____ forms are submitted.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Cheng-Liang HOU

Group Art Unit: 2616

Serial No.: 10/694,732

Examiner: R.K. JAIN

Filed: October 29, 2003

Atty. Docket No.: 058268.00324

For: SYSTEM AND METHOD FOR VARIABLE DATA TRANSMISSION RATE
RESOLUTION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

February 26, 2008

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicant hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-22 in the above identified application. Claims 1-22 were finally rejected in the Office Action dated September 26, 2007. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review.

The Final Office Action rejected claims 1-6, 8-14, and 16-21 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,219,343 (hereinafter Honkasalo). Applicants submit that there is clear error with regard to the anticipation of at least one element of claims 1, 8-9, and 16, upon which claims 2-6, 10-14, and 17-21 are dependent.

Applicants respectfully submit that the present claims recite subject matter which is neither disclosed, nor suggested, by Honkasalo, and that, therefore, the final rejections are clearly improper and without basis. Specifically, Hager fails to disclose, or suggest, at least, "incrementing a port transmission rate using a variable resolution," as recited in claim 1, and similarly recited in claims 8-9 and 16.

In the Response to Arguments section, the Final Office Action took the position that Honkasalo describes a control algorithm employed to determine a data rate allocation for the packet data transmission. The Final Office Action further took the position that "according to

Applicant's specification ... 'resolution' is interpreted to mean data rate," and Honkasalo either alone or in combination discloses each and every limitation of the subject claims. (See Final Office Action at pages 4-5). However, Applicants respectfully disagree for at least the following reasons.

Honkasalo is directed to controlling data rate allocations to data packet users transmitting packet data over a CDMA cellular communication network. Traffic channels and radio capacity allocated for packet data services within the network are evaluated to determine an available resource for a packet data transmission. A rate control algorithm is employed to determine a data rate allocation for the packet data transmission. (see Honkasalo at col. 7, lines 3-5). The transmit power of a transmitter is limited to provide the determined data rate allocation for the packet data transmission. (see Honkasalo at col. 7, lines 33-36).

There are two main issues in which Applicants and the Examiner are in disagreement over. The first issue is the meaning of the term "resolution," as defined in the specification of the present application. The second issue is whether Honkasalo discloses incrementing a port transmission rate using a variable resolution. Both of the issues will be addressed in turn.

With respect to the first issue, i.e. the meaning of the term "resolution," as discussed above, the Final Office Action stated that "according to Applicant's specification ... 'resolution is interpreted to mean data rate.'" Applicants respectfully submit that this statement is erroneous. Applicants' specification states:

The speed (rate) of data transmission is generally increased or decreased linearly with a fixed resolution. In other words, the rate can be increased or decreased in quantized fixed amounts. In order to indicate the rate in the switch, registers in the switch are set with values that are proportional to the rate required. For example, using a resolution of 64 Kbps, a register value of 1 would indicate 64 kbits [sic] while a register value of 2 would indicate 128 kbps. Accordingly, a 15-bit register would be required to indicate a maximum rate of 10 Mbps. (see Specification at paragraphs 0004-0005).

Thus, the specification makes clear that “resolution” means a fixed quantized amount, by which a function of rate change can be calculated, while “rate” means the actual speed of data transmission. For example, if the resolution of a switch is 64 Kbps, then the switch may have a rate of 64 Kbps, 128 Kbps, 192 Kbps, etc. To use a metaphor, “rate” would be analogous to the speed of a car driving on a highway, whereas “resolution” would be analogous to the acceleration of the car. Thus, the specification makes clear that the terms “resolution” and “rate” are distinct concepts, and are not interchangeable, contrary to the position of the Final Office Action. Applicants respectfully submit that an understanding of the term “resolution” is critical to the issue of whether Honkasalo discloses “variable resolution,” because once it is understood that “resolution” and “rate” are distinct concepts, it is clear that the disclosure of “variable speed” (i.e. a switch will transmit data at different speeds) does not necessarily disclose “variable resolution.”

With respect to the second issue, i.e. whether Honkasalo discloses incrementing a port transmission rate using a variable resolution, Applicants first note that Honkasalo discloses two rate control algorithms: the first in which the transmission power of a base station for packet data service is evaluated in order to control the sharing of available network resources among the users (see Honkasalo at col. 5, line 28 – col. 7, line 47); and the second in which the current system load of the cell is evaluated in order to control the peak data rate allocated per user transmission (see Honkasalo at col. 7, line 66 – col. 10, line 26). Both rate control algorithms are used to achieve the same objective: assigning an optimal data rate to each mobile station which makes a request for packet data transmission, so that total system throughput is optimized. (see Specification at col. 2, line 13 – col. 3, line 46). In other words, Honkasalo discloses assigning each mobile station its own data rate, and thus, discloses variable rate. However, there is absolutely no disclosure, or suggestion, for incrementing a data rate after it has been assigned by the mobile station. Furthermore, there is no disclosure, or suggestion, of variable resolution, because: (1) there is no discussion of incrementing the data rate, once it has been assigned, and there is no disclosure, or suggestion, of incrementing a first rate of a first mobile station by a first resolution (i.e. fixed quantized amount), and incrementing a second rate of a second mobile station by a different second resolution; and (2) Honkasalo merely discloses multiple data rates,

and, as discussed above, the disclosure of variable rate does not result in the disclosure of variable resolution, as the two are distinct concepts.

Furthermore, the Final Office Action cites col. 7, lines 2-17, claim 5, Figures 5 and 6 for support of its conclusion that Honkasolo discloses incrementing a port transmission rate using a variable resolution. With respect to col. 7, lines 2-17, this passage merely discloses that once the minimum data rate has been assigned to candidate mobile stations, the system raises the data rate to the next threshold, and evaluates the remaining mobile stations to determine candidate mobile stations. However, once the system assigns a data rate to the mobile station, that data rate does not change. With respect to claim 5 and Figures 5 and 6, both the claim and the figures are directed to a system that provides a different rate for each mobile station (i.e. variable rate). As discussed above, “variable rate” is a distinct concept from “variable resolution,” and there is simply no disclosure, or suggestion, in claim 5 or Figures 5-6, of incrementing a port transmission rate using a variable resolution.

In view of the above, Applicants respectfully assert that Honkasolo does not disclose, teach, or suggest all of the limitations of claims 1, 8-9, and 16, because Honkasolo does not disclose, teach, or suggest, at least, “incrementing a port transmission rate using a variable resolution,” as recited in claim 1, and similarly recited in claims 8-9 and 16, and that, therefore, the final rejections are improper and without basis. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the § 102(b) rejection.

Applicants submit that claims 2-6, 10-14, and 17-21 are dependent upon claims 1, 9, and 16, respectively. Thus, claims 2-6, 10-14, and 17-21 should be found allowable for at least their dependence upon claims 1, 9, and 16, respectively, and for the specific limitations recited therein.

Claims 7, 15, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honkasolo, in view of U.S. Publication No. 2004/0017306 (“herein Miao”). Applicants note that claims 7, 15, and 22 are dependent upon claims 1, 9, and 16, respectively. In addition, as stated above, Honkasolo does not disclose or suggest all of the elements of independent claims 1, 9, and 16. Applicants submit that there is clear error with regard to the combination of the cited references teaching all the recitations of independent claims 1, 9, and 16. Applicants submit that Miao, like Honkasolo, also fails to disclose, teach, or suggest, at least, “incrementing a port

transmission rate using a variable resolution,” as recited in claim 1, and similarly recited in claims 9 and 16. As such, Miao fails to cure the deficiencies in Honkasolo, discussed above. Consequently, the combination of Honkasolo and Miao fails to disclose or suggest all the elements of claims 7, 15, and 22, which are dependent upon claims 1, 9, and 16, respectively. Furthermore, Applicants respectfully submit that claims 7, 15, and 22 should be found allowable for at least their dependence on claims 1, 9, and 16, respectively, and for the specific limitations recited therein. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the § 103(a) rejection.

For at least the reasons discussed above, Applicants respectfully submit that the present claims recite subject matter which is neither disclosed nor suggested by Honkasolo and Miao, and that, therefore, the final rejections are clearly improper and without basis. It is therefore respectfully requested that all of claims 1-22 be allowed, and this application passed to issue.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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Enclosures: PTO/SB/33 Form / Notice of Appeal
Petition for Extension of Time / Check No. 18213